



**BILLING CODE: 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Anthony Schapera, M.D.; Decision and Order**

On December 31, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Anthony Schapera, M.D. (hereinafter, Registrant), of Bishop, California. OSC, at 1. The OSC proposes the revocation of Registrant's Certificate of Registration No. AS3008213, the denial of any applications for renewal or modification of his registration, and the denial of "any applications for any other DEA registrations" on the ground that he "has no state authority to handle controlled substances." *Id.* (citing 21 U.S.C. 824(a)(3)).

The substantive ground for the proceeding, as alleged in the OSC, is that Registrant is "without authority to handle controlled substances in the State of California, the state in which . . . [he is] registered with DEA." *Id.* Specifically, the OSC alleges that the Medical Board of California revoked Registrant's medical license effective June 22, 2018. *Id.*

The Show Cause Order notified Registrant of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. OSC, at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

**Adequacy of Service**

In a Declaration dated March 19, 2019 (hereinafter, Declaration), a Diversion Investigator (hereinafter, DI) assigned to the Newark Field Division declared under penalty of

perjury that he and another DI “personally served” the OSC on Registrant. Declaration, at 1. Attached to the DI’s Declaration is a DEA-12, Receipt for Cash or Other Items. According to the DI, Registrant acknowledged receipt of the OSC by signing this DEA-12 on January 17, 2019. *Id.*

In its Request for Final Agency Action (hereinafter, RFAA), the Government represents that “at least 30 days have passed since the . . . [OSC] was served on Registrant . . . and Registrant has not requested a hearing and has not otherwise corresponded or communicated with DEA” regarding the OSC “including the filing of any written statement in lieu of a hearing.” RFAA, at 2. The Government requests “a Final Order revoking Registrant’s DEA registration.” *Id.* at 4.

Based on the DI’s Declaration, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on January 17, 2019. I also find that more than 30 days have now passed since the Government accomplished service of the OSC. Further, based on the Government’s written representations, I find that neither Registrant, nor anyone purporting to represent him, requested a hearing, submitted a written statement while waiving Registrant’s right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived his right to a hearing and his right to submit a written statement and corrective action plan. 21 C.F.R. § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 C.F.R. § 1301.43(e).

## **FINDINGS OF FACT**

### **Registrant's DEA Registration**

Registrant is the holder of DEA Certificate of Registration No. AS3008213 at the registered address of 2385 Apache Drive, Bishop, CA 93514. GX 1 (Certification of Registration History), at 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration is in an "active pending status" and expires on February 28, 2021. *Id.*

### **The Status of Registrant's State License**

On May 24, 2018, the Medical Board of California (hereinafter, MBC) issued a Decision ordering the revocation of Registrant's medical license effective June 22, 2018. The MBC Decision adopts the Proposed Decision of Administrative Law Judge Jonathan Lew. ALJ Lew received evidence, heard oral argument, and closed the record before issuing the Proposed Decision. Registrant was represented by counsel before ALJ Lew.

The MBC Decision states that the causes for the revocation are (1) Registrant's conviction of criminal offenses substantially related to the qualifications, functions, or duties of a physician and surgeon and that also constitute unprofessional conduct, and (2) Registrant's impairment due to a mental condition that "impacts . . . [his] ability to safely engage in the practice of medicine at this time." Decision, at 25.

According to California's online records, of which I take official notice, Registrant's license is still revoked.<sup>1</sup> Medical Board of California Online License Search, [http://www.mbc.ca.gov/Breeze/License\\_Verification.aspx](http://www.mbc.ca.gov/Breeze/License_Verification.aspx) (last visited July 29, 2019).

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<sup>1</sup> Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C.

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in California, the State in which he is registered with the DEA.

## **DISCUSSION**

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21

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§ 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration within 15 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have 15 calendar days to file a response.

U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper, supra*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Blanton, supra*, 43 Fed. Reg. at 27,617.

According to the California Uniform Controlled Substances Act, "No person other than a physician . . . shall write or issue a prescription." Cal. Health & Safety Code § 11150 (West, Westlaw current with urgency legislation through Ch. 5 of 2019 Reg. Sess.). Further, "physician," as defined by California statute, is a person who is "licensed to practice" in California. Cal. Health & Safety Code § 11024 (West, Westlaw current with urgency legislation through Ch. 5 of 2019 Reg. Sess.).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As already discussed, a physician must be licensed to practice medicine in order to write or issue a controlled substance prescription in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to dispense controlled substances in California, he is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked.

## **ORDER**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f) and 824(a), I hereby revoke DEA Certificate of Registration No. AS3008213 issued to Anthony Schapera, M.D. Further, I hereby deny any pending application of Anthony Schapera, M.D. to renew or modify this registration, as well as any pending application of Anthony Schapera, M.D. for registration in California. This Order is effective **[INSERT DATE THIRTY DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Dated: July 28, 2019.

**Uttam Dhillon,**

*Acting Administrator.*

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